

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108
(617) 727-8352
(800) 462-OCPF

MICHAEL J. SULLIVAN
DIRECTOR

November 19, 1996
AO-96-30

Maureen Healy, Executive Secretary
Board of Selectmen
Town of West Tisbury
P.O. Box 278
West Tisbury, MA 02575

Re: Expenditure of public funds to distribute information to
voters regarding town meeting or ballot questions

Dear Ms. Healy:

This letter is in response to your recent request for an advisory opinion regarding when certain information may be distributed by the West Tisbury Board of Selectmen to voters.

You have stated that the Selectmen prepared a flyer for a recent Town Meeting providing information regarding the Martha's Vineyard Regional High School debt payment. You have asked three specific questions, each of which I will answer separately after discussing the relevant law.

I. Discussion

In Anderson v. City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a State election.

Accordingly, this office has concluded that "governmental entities" may not expend public resources or contribute anything of value in support of or opposition **to a ballot question**. Public resources include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copier and fax machines and word processors, as well the use of a state, county or municipal seal. Even the occasional, minor use of public resources, including a state, county or municipal seal **to influence a ballot question**, is inconsistent with state law and should be avoided.

The use of public resources solely **in connection with a matter before town meetings** and not also the subject of a ballot question, however, is not barred by the campaign finance law. See AO-94-37.

In addition, public resources may not be used to distribute even admittedly objective information **regarding a ballot question** unless expressly authorized by state law. The use of government resources, such as telephones and printed materials provided by public funds, and use of facilities paid for by public funds, would be improper, unless each side were given equal representation and access. See OCPF's Campaign Finance Guide for State, County and Municipal Employees, the Joint OCPF and Secretary of State, Elections Division Memorandum dated March 1996, and the Joint Question and Answer Guide issued by the Secretary of State's Election Division and this office and distributed to school administrators by the Commissioner of Education on March 1, 1996 (copies are enclosed).

The newsletter which you copied and attached to your letter apparently related solely to an issue on the warrant at Town Meeting. Therefore, unless the newsletter was also intended to influence the outcome on a ballot question, its distribution did not violate the campaign finance law.

II. Specific Questions

1. "Is it permissible for the Selectmen to provide voters with such information?"

Yes. As noted above, the campaign finance law does not prohibit the distribution of information to voters which relates only to an issue on a town meeting warrant. If the information also relates to a ballot question, however, distribution using public funds may be prohibited.

The campaign finance law regulates matters which are submitted to voters on an election ballot. The law does not prohibit expenditures designed solely to lobby or influence a school committee, town meeting or city council. However, any expenditures made to influence a governmental body **and** an election are subject to the campaign finance law. On occasion, a governmental expenditure may be made to lobby or influence a town meeting warrant article which will likely be the subject of a subsequent ballot question. Whether such an expenditure is made for the purpose of influencing not only the town meeting, but also the expected ballot question, requires consideration of "such factors as the style tenor and timing of the expenditures." See IB-91-01. A governmental expenditure made to influence both the town meeting and the subsequent ballot question would be prohibited.

2. "Is it permissible for the Selectmen to distribute such information at a United States Post Office and local stores?"

The range of political activity which may take place in federal buildings is not within the jurisdiction of this office. To the extent information regarding a ballot question is posted or distributed in buildings occupied for state, county or municipal purposes, however, equal access must be assured to all opposing parties.

The campaign finance law would not prohibit the distribution of information distributed by the Selectmen regarding a town meeting in local stores.

3. "Is it permissible for the Selectmen to distribute such information at the Town Meeting?"

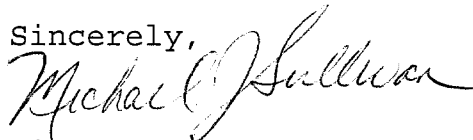
Yes. As noted above, if the information relates only to town meeting, the campaign finance law is not implicated.

If the Selectmen wish to provide information to voters **about a ballot question**, there are a number of options available for doing so. For example, the Selectmen could issue a press release. Although the Selectman could not, at public expense, distribute information about the ballot question to voters, they could make information¹ available to a privately funded ballot question committee which may then copy and distribute the information. Finally, the Selectmen could hold hearings or post a statement regarding the question, if equal access is provided to those opposing as well as supporting the question.

In the context of a ballot question, "equal access" means, for example, that proponents and opponents who request and obtain space for a hearing must be provided space on the same terms and conditions. "Equal access" does not mean, however, that proponents or opponents must be invited to attend or be asked to speak at each other's hearing.

We appreciate your interest in ensuring compliance with the campaign finance law and encourage you to contact us in the future if you have further questions.

Sincerely,



Michael J. Sullivan
Director

MJS/cp
Enclosures

¹ Distribution of information must comply with the public records law. See M.G.L. c. 66, s. 10.